



## North Carolina General Assembly Senate

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### COMMITTEES

Appropriations-Agriculture, Natural and  
Economic Resources  
Agriculture/Environment/Natural Resources  
State And Local Government  
Select Committee on Prison Safety

September 16, 2019

### COMPLAINT TO NC ATTORNEY GENERAL'S OFFICE

I, Harper Peterson, State Senator for District 9, New Hanover County, wish to formally file a complaint against the New Hanover County (NHC) Commission for their failure to fully inform and openly engage the citizens of New Hanover County in the decision making process regarding the potential sale of the publicly owned hospital, New Hanover Regional Medical Center (NHRMC). Furthermore, fundamental fiduciary, legal and procedural responsibilities have been put in question and have damaged the public's trust in fair and open government. (NHRMC is a "charitable" nonprofit corporation that is publicly held by the citizens of New Hanover...)

The NHC Commission will consider an "Intent to Sell" resolution on September 16, which will allow, if passed, for NHC to issue a "Request for Proposal" (RFP) to qualified groups that may be interested in the purchase of NHRMC. State statute, N.C.G.S. Section 131E-13, lays out the specific process that NHC must follow, including public notices and public hearings.

Under these guidelines a sale could be considered and consummated within 90 days at the "absolute and sole discretion" of the NHC Commission.

The basis for my complaint are the following:

- I have attended four (4) public meetings and listened to hundreds of citizens, their comments and questions, and recognize that there is great uneasiness throughout the community that this process has been rushed, and that there is concern that an impartial, fact driven and inclusive process will NOT be followed in the future. Specifically, certain County Commissioner(s) have publicly expressed a desire to sell NHRMC, have ridiculed public comment and concerns responsibly expressed at public meetings, and have suppressed and dismissed the public's desire to extend the September 16th vote. Citizens simply want to better understand the options and implications of a sale, and insure the best possible health care for EVERY citizen for generations to come.

These actions lead me to believe that a deal is already in the works and that a perspective buyer(s) could potentially dictate the terms of a sale agreement. This will not be in the best interest of the seven (7) counties that NHRMC serves, nor will it be in the best interest of the over 7000 employees of the hospital, and certainly not in the best interest of the scores of nonprofit community health service groups that work with and supplement the hospital's mission.

- There is NO clear legal record of what entity, NHC or NHRMC, actually owns the multiple properties, buildings, equipment, assets, etc. comprising NHRMC. This determination is of paramount importance, as state law, N.C.G.S 55A-12-02(g) and N.C.G.S. 131E-13, specifically directs how, and by who, proceeds from a potential sale or lease of NHRMC will be handled...

NHC has publicly stated that any proceeds from a sale could be used for ANY purpose it feels appropriate, health related or not.

I interpret the law quite differently, whereby “any distribution of assets shall be to a tax exempt organization whose purposes are consistent with the purposes of the existing corporation.” Paragraph 9 of the Articles of Incorporation of New Hanover Memorial Hospital, Inc. as amended on April 30, 1986.

This has led me to believe that the NHC Commission has NOT done their due diligence; specifically what properties they own and what properties NHRMC owns, what are the tax and market values of all the NHRMC “campus” properties, what other types of buyers, for profit, NFP, operating profiles, terms and conditions that would be desirable, etc. that will be included in a RFP. I also believe that NHC has misinterpreted state statute requirements regarding any and all proceeds from a sale and that this will only complicate this initiative.

- There is no record of a public discussion or decision by the NHC Commission to consider a matter of such enormous consequence; the potential sale of NHRMC, no record of directing the County Manager to spearhead this initiative, no record of directing the County Manager to so closely partner with NHRMC’s CEO to manage and message this initiative and speculation on its far reaching consequences.

This has led me to believe that there may be malfeasance on the part of an individual(s) within New Hanover County Government. The County Manager serves at the NHC Commission’s pleasure and does NOT act independently. Someone or somebody is acting improperly and outside their legal bounds.

- There has been no accountability to the NHC taxpayers regarding the tens of thousands of tax dollars spent on NHC staff time, resources, marketing, etc., nor the tens of thousands of NHC tax dollars spent on contracts with third parties, including legal advisors, business consultants and communication specialists dating back months prior to the July 23rd public pronouncement that an effort would begin.

This has led me to believe that there has been “fiduciary lapse” by the NHC Commission with respect protecting the taxpayers of NHC.

- The NHC Commission and its agents have claimed that there has been NO communication or negotiation with larger hospitals as potential buyers at any time during this process, in an attempt to “test the waters.” There is now clear evidence that this is UNTRUE.

Numerous health agencies have been engaged by the NHC’s Agents. Moving forward it will be hard for the public to have faith in the stated intentions of the NHC Commission’s governance and its AGENTS regarding this matter. The same can be said for the NHRMC’s Board of Trustees Executive Committee and its AGENT and CEO. Their combined messaging has been in “lock step” throughout. Also of fundamental importance will be the drafting of a meaningful RFP as well as the appointment of impartial and objective citizens to the Partnership Advisory Group (PAG).

The proposed RESOLUTION limits these PAG appointments solely with the County Manager and Hospital CEO, and should be expanded to allow individual NHC Commissioners to appoint, as well as allowing stakeholder groups within and outside NHRMC to choose knowledgeable representation.

This has led me to believe that the government process in this matter has been corrupted, the public confidence has been violated, and a vote of “NO CONFIDENCE” in this matter going forward is in order.

In conclusion I believe that the importance of NHRMC's continued quality of health service to the hundreds of thousands of citizens in Southeastern North Carolina demands your immediate attention.

A review of all actions, internal communications, outside contracts and contacts, and clandestine relationships by NHC and NHRMC relevant to this matter, prior to and after July 23rd, is warranted.

Going forward, your attention, oversight and corrective action with regards to this extraordinary decision our community is presently considering is needed NOW!

Sincerely,

A handwritten signature in black ink, appearing to read 'HWP', followed by a long horizontal line extending to the right.

Senator Harper Peterson  
District 9